

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

JEREMIAH JAPHET,  
Plaintiff,  
vs.  
CITY OF BETHEL,  
Defendant.

Case no. 4BE-11-23 CM

## Complaint

11 COMES NOW; plaintiff Jeremiah Japhet and alleges as  
12 follows:

## **Parties, Jurisdiction, and Venue**

- 14       1. Plaintiff Japhet is, or at all times pertinent was,  
15 a resident of the Fourth Judicial District.

16       2. Defendant City of Bethel, is a municipal governing  
17 body whose authority is coextensive with the territorial  
18 bounds of the City of Bethel.

19       3. Defendant City of Bethel owns, operates, and  
20 controls the Bethel Police Department.

21       4. The events alleged herein, and giving rise to this  
22 action, occurred within or near the City of Bethel in the  
23 Fourth Judicial District.

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### Facts Giving Rise to Claims.

3       5. On or about September 11, 2010; plaintiff Japhet was  
4                  injured, bleeding and complaining of pain, as he laid on the  
5                  ground near Owl Park and AVCP-RHA low-income apartment complex  
6                  in Bethel, Alaska.

7       6. Plaintiff Japhet was crying, saying he needed help  
8 was sprawled out on the ground, unable to speak coherently,  
9 and unable to get up off the ground.

10       7. Three young persons happened upon plaintiff and  
11 witnessed his condition.

12       8. One such witness reported plaintiff's condition and  
13 location to a 9-1-1 responder at the City of Bethel's  
14 Dispatch. During the call, the dispatch worker could hear  
15 Plaintiff Japhet in distress crying in the background, and it  
16 was apparent he needed help. The minor responder also asked  
17 for help for the plaintiff. During the who in turn dispatched  
18 Matthew Fralick -- a police officer employed by defendant City  
19 of Bethel -- to plaintiff's location at the parking lot.  
20

21       9. The dispatcher, in turn, dispatched a police  
22 officer, Matthew Fralick, to Plaintiff Japhet's location.

23       10. Upon his arrival at the scene, Fralick made contact  
24 with the three above-referenced witnesses who were standing  
25 around plaintiff as he remained sprawled out on the ground.

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1       11. One or more of the witnesses informed Officer  
2 Fralick that Plaintiff Japhet needed help.

3       12. Despite the fact that plaintiff had been obviously  
4 assaulted, traumatized, and unable to get up, Fralick did not  
5 question the witnesses to any appreciable extent about what  
6 they knew about plaintiff's plight, or the extent of his  
7 injuries.

8       13. Fralick radioed in a request for assistance from the  
9 Community Service Patrol ["CSP"], a municipally operated  
10 organization whose mission is to transport chronically  
11 inebriated persons to sites where they can receive screening  
12 and a safe place to "sleep off" of their intoxication.

14      14. At all times relevant to this complaint, the City of  
15 Bethel employs and had readily available emergency medical  
16 technicians (EMTs) and other employees and agents who can  
17 provide emergency medical transportation and care; and the  
18 City also had in its possession backboards and safety  
19 equipment to provide emergency and safe transportation.  
20 Despite knowing that such emergency workers were available,  
21 the officer, dispatcher and others did not call for assistance  
22 from emergency medical responders or anyone else possessing  
23 the skill necessary to properly assess and evaluate  
24 plaintiff's condition and act with due care in moving him.

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1       15. In response to Fralick's call for assistance,  
2 Community Service Patrol agents -- Alex Botamenenko and John  
3 Atwell -- arrived on the scene.

4       16. Agents and employees of the City of Bethel,  
5 including Fralick, Botamenenko, and Atwellset, made the  
6 assumption that plaintiff Japhet was an uninjured inebriate;  
7 they failed to gather information from the responders as to  
8 his physical condition; and they classified and treated him as  
9 another Bethel drunk who needed to sleep it off.  
10

11       17. Agents and employees of the City of Bethel  
12 thereafter failed to use a backboard; failed to stabilize  
13 plaintiff Japhet's spine; failed to provide due care in moving  
14 him, but instead grabbed the plaintiff Japhet by his arms and  
15 legs, jerked his body and spine and placed him into the back  
16 of a patrol van for transport to a sleep-off center.

17       18. Agents and employees of the City of Bethel failed to  
18 properly assess the situation, give any thought to, or even  
19 consider, that the plaintiff Japhet was suffering from a back  
20 injury, and consider that their acts and omissions in failing  
21 to act with due care and caution in his transport would result  
22 in irreparable spinal injury.  
23

24       19. Agents and employees of the City of Bethel,  
25 including Fralick, Botamenenko, and Atwell, failed to act with

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1 due care and caution, including but not limited to: 1) failing  
2 to assess plaintiff's injuries; 2) failing to inquire and ask  
3 responders as to what they knew about the injuries; 3)  
4 directing responders to leave the scene without obtaining full  
5 and complete information prior to touching the plaintiff;  
6 4) failing to call and obtain assistance from known emergency  
7 medical providers and technicians, who were readily available  
8 and employed by the City; 5) failing to use safety and  
9 transport equipment that was also in the possession of the  
10 City; and readily available to the City's agents; 6) lifting  
11 plaintiff by pulling on his arms; 7) lifting plaintiff by  
12 moving his legs; 8) lifting plaintiff by stretching and moving  
13 his spine and neck; 9) placing plaintiff into the back of a  
14 van, allowing his spine and neck to bounce and move while the  
15 agents drove; 10) lifting plaintiff out of the van by pulling  
16 his arms; 11) lifting plaintiff out of the van by pulling his  
17 feet; 12) lifting the plaintiff out of the van by stretching  
18 and moving his spine and neck. Defendant's acts and  
19 omissions, through its agents and employees, directly and  
20 proximately caused injury to plaintiff's spine rendering him a  
21 permanent paraplegic.  
22  
23  
24  
25

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1       20. At all times relevant to this complaint, Fralick,  
2 Botamnenko, Atwell and others, were acting within the course  
3 and scope of their employment with defendant City of Bethel.  
4

5       21. As a direct and proximate result of the failure to  
act with due care and caution; due to the negligence of  
6 defendant, through its agents, servants and employees,  
7 including but not limited to the acts and omissions set forth  
8 above; plaintiff was injured, including but not limited to:  
9

10       A. Permanent paralysis in his lower extremities  
11 [paraplegia];

12       B. Physical pain and suffering;

13       C. Severe emotional distress and psychological  
14 injury;

15       D. Surgeries, hospitalizations, physical and  
16 psychological therapy and rehabilitation, assisted living, and  
17 palliative care;

18       E. Medical expenses;

19       F. Loss of enjoyment of life and loss of sexual  
20 faculties;

21       G. Pecuniary losses including but not limited to,  
22 lost wages and earnings, lost earning capacity, and loss of  
23 subsistence;  
24

25

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1           22. Plaintiff's injury makes him more prone to  
2 infections, complications, and further hospitalizations. He  
3 will need care, assistance, and professional help for the rest  
4 of his life.

5

6    First Cause of Action  
7    [Defendant City of Bethel's  
8    Vicarious Liability for Negligence  
9    of Its Agents and Employees]

10           23. Plaintiff realleges Paragraphs 1 through 21 as  
11 though fully set forth.

12           24. At all times pertinent, Fralick, Botamenenko, the  
13 dispatcher who has yet to be identified, and Atwell were  
14 acting in the course and scope of their employment with their  
15 respective above-identified employers, and are agents,  
servants and employees for the City of Bethel.

16           25. At all times pertinent, Fralick, Botamenenko, the  
17 dispatcher, and Atwell were acting in pursuit of a common  
18 undertaking, goal, or plan, as co-participants, and as agents  
19 for each other.

20           26. Upon information and belief, defendant City of  
21 Bethel had adopted -- either expressly or informally --  
22 standard operation procedures, customary operating procedures,  
23 safety procedures, and/or guidelines prescribing the  
24 appropriate course of action that officers, agents and/or

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1 emergency responders should take when presented with the  
2 possibility of a paralyzing spinal injury of the sort  
3 presented by the above-alleged circumstances.

4       27. Said procedures, standards, and/or guidelines gave  
5 rise to a duty of care to immobilize and/or stabilize  
6 plaintiff's cervical spine so as to reduce or eliminate the  
7 foreseeable risk of dislocations or subluxations of the  
8 vertebrae that might sever, or impinge upon, vital nerves in  
9 his cervical spine.

10      28. Said duties of care are understood by, and basic to,  
11 the public safety professions, including the policing  
12 profession -- as well as reasonably aware and educated lay  
13 persons.

14      29. Apart from said procedures, standards, and/or  
15 guidelines, Fralick, Botamenenko, and Atwell owed plaintiff a  
16 general duty of care including, but not limited to, the duty  
17 to handle plaintiff with care while he was in such a  
18 vulnerable state, and to immobilize and/or stabilize his  
19 cervical spine so as to reduce or eliminate the foreseeable  
20 risk of a spinal cord injury.

21      30. Fralick, Botamenenko, and Atwell and others breached  
22 said duties of care, proximately and foreseeably causing the  
23 injuries and damages heretofore pled.

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31. Under the doctrine of respondeat superior, defendant City of Bethel is vicariously liable to plaintiff for negligence.

Second Cause of Action  
[Defendant City of Bethel's  
Liability for Its Own Negligence]

7       32. Plaintiff realleges Paragraphs 1 through 21, and 25  
8 through 28 as though fully set forth.

9       33. Defendant City of Bethel undertook to adequately and  
10 properly train and supervise its law-enforcement and CSP  
11 officers.

12       34. Defendant City of Bethel owed plaintiff duties of  
13 care in seeing to it that Fralick, Botameneenko, and Atwell  
14 were adequately trained and supervised in the proper method of  
15 evaluating and handling obviously traumatized victims in  
16 plaintiff Japhet's condition.

18        35. Acting through its agents, employees, and/or  
19 contractors over whom it possessed control, Defendant City of  
Bethel breached said duties of care.

21       36. Defendant City of Bethel's failure to adequately  
22 train and supervise Fralick, Botamenenko, and Atwell and  
23 others proximately and foreseeably caused the injuries and  
24 damages heretofore pled.

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37. Defendant City of Bethel is directly liable to plaintiff for its own negligence in the minimum sum of \$100,000 the exact amount to be proved at trial.

WHEREFORE, plaintiff Japhet prays for judgment as follows:

7       1) . As to the First and Second Causes of Action, for a  
8 judgment in favor of plaintiff Japhet and against defendant  
9 City of Bethel, in the minimum sum of the \$100,000, the exact  
10 amount to be proved at trial;

11 2) For costs, interest, and attorney's fees;

12           3) For such other relief the court deems just and  
13 reasonable.

DATED this 13 day of May, 2011, at Bethel, Alaska.

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By: David Henderson #9806014

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